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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**HONG KONG ORIENTAL IMPORT AND** ) **Case No. 3:15-cv-3921**  
**EXPORT CO. LTD.,** )  
 )  
**Plaintiff,** )  
 ) **COMPLAINT**  
**v.** )  
 )  
**AGRI-NUT COMPANY, INC.,** )  
 )  
**Defendant.** )

**COMPLAINT**

Plaintiff, Hong Kong Oriental Import and Export Co. Ltd. ("Oriental"), sues Defendant, Agri-Nut Company, Inc. ("Defendant"), and alleges as follows:

**I. INTRODUCTION**

1. This is an action involving claims for breach of contract arising out of a contract for the international purchase of movable goods.

**II. PARTIES**

2. Oriental is a corporation incorporated under the laws of Hong Kong with its principal place of business in the People's Republic of China.

3. Defendant is a corporation incorporated under the laws of California with its principal place of business in South San Francisco, California.

4. Defendant may be served with process by serving its registered agent: Mr. Dennis Lucas, 1633 Bayshore Highway, Suite 310, Burlingame, California 94010.

### III. JURISDICTION

5. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331, because Oriental asserts claims arising under the laws and treaties of the United States.

6. The law that governs this case is the United Nations Convention on Contracts for the International Sale of Goods, Apr. 11, 1980, S. Treaty Doc. No. 98-9 (1983), 19 I.L.M. 671 (1980), reprinted at 15 U.S.C. App. (entered into force Jan. 1, 1988) (the "CISG").

7. At all relevant times, China and the United States were signatories to the CISG.

8. At all relevant times, China and the United States had not opted out of any relevant provisions of the CISG.

9. The CISG creates a private right of action in federal court under federal law.

10. The CISG applies to contracts for the sale of goods between parties whose places of business are in different contracting states of the CISG.

11. As federal law, the CISG preempts inconsistent provisions of state law such as the Uniform Commercial Code.

12. This action involves a contract for the sale of goods between Oriental and Defendant.

13. Oriental has its place of business in China.

14. Defendant has its place of business in the United States.

15. Parties may contractually exclude the application of the CISG, but they must do so explicitly.

16. At all relevant times, Oriental and Defendant did not expressly agree to exclude the application of the CISG.

17. Because the places of business of the two parties are in different CISG contracting states, and because the parties did not expressly agree to exclude application of the CISG, the CISG governs the contract between them.

18. This Court also has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(2).

19. Oriental claims damages in excess of \$75,000.00, exclusive of interests and costs.

20. Oriental is a citizen of China, because it is a corporation that is incorporated in China and has its principal place of business in China.

21. Defendant is a citizen of California, because it is a corporation incorporated in California and has its principal place of business in California.

22. This Court has personal jurisdiction over Defendant because Defendant is a corporation registered in California.

23. This Court also has personal jurisdiction over Defendant because Defendant carries on a business in California.

## IV. VENUE

24. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because the only defendant in this action resides in the Northern District of California.

25. All conditions precedent to the filing of this action, if any, have occurred or have been excused or waived.

26. Oriental has been required to retain undersigned counsel to enforce its rights through this action and has agreed to pay its counsel a reasonable fee for those services.

1                                   **V.      INTRADISTRICT ASSIGNMENT**

2            27.      The appropriate district for this action is San Francisco, because the Defendant is  
3 located in San Mateo County.

4                                   **VI.      FACTS**

5                                   **THE CONTRACT FOR ORIENTAL'S PURCHASE OF ALMONDS FROM**  
6                                   **DEFENDANT**

7            28.      On April 27, 2014, Oriental and Defendant executed a contract titled "Sales  
8 Contract - SC-8503" (hereinafter referred to as the "Contract"). A true and correct copy of the  
9 Contract is attached hereto as **Exhibit A**.

10           29.      In the Contract, Defendant promised to sell almonds to Oriental.

11           30.      In the Contract, Oriental promised to pay Defendant for the almonds.

12           31.      In the Contract, Oriental promised to pay Defendant a deposit.

13           32.      Pursuant to the Contract, Oriental paid the required deposit to Defendant.

14                                   **DEFENDANT'S BREACH OF THE CONTRACT**

15           33.      Despite receiving Oriental's deposit, Defendant failed and refused to perform its  
16 contractual obligations under the Contract.

17           34.      Defendant failed and refused to ship the contracted for goods to Oriental.

18                                   **THE SETTLEMENT TO CANCEL THE CONTRACT**

19           35.      Because Defendant failed and refused to perform the Contract, the parties  
20 negotiated a settlement.

21           36.      On September 29, 2014, Defendant and Oriental executed a contract titled  
22 "Settlement for Contract # 8503 - 30 Containers Np Inshell" (hereinafter referred to as the  
23 "Settlement"). A true and correct copy of the Settlement is attached hereto as **Exhibit B**.

             37.      In the Settlement, Oriental and Defendant agreed to cancel and settle the Contract.

1           38. In the Settlement, Defendant promised to return the full amount of Oriental's  
2 deposit.

3           39. In the Settlement, Defendant also promised to pay Oriental an additional  
4 \$337,500.00 as compensation for damages that Oriental suffered as a result of Defendant's  
5 breach of the contract.

6           40. The Settlement provides that the "[t]otal amount will be paid No later than June  
7 2015."

8           41. Pursuant to the Settlement, Defendant returned Oriental's deposit.

9           42. In subsequent transactions between the parties, Oriental credited Defendant with  
10 payments totaling \$43,900 towards the \$337,500 that the Settlement required Defendant to pay  
11 to Oriental.

12           43. After Oriental credited Defendant with this amount, Defendant still owed Oriental  
13 \$293,600 under the Settlement.

14                           **THE BREACH OF THE SETTLEMENT**

15           44. Defendant failed and refused to pay the remaining balance by June 2015.

16           45. On July 2, 2015, Oriental sent to Defendant a letter demanding payment of the  
17 outstanding balance required by the Settlement (hereinafter referred to as the "Demand Letter").

18           46. In the Demand Letter, Oriental demanded that Defendant pay to Oriental the  
19 outstanding \$293,600 owed under the Settlement on or before July 31, 2015.

20           47. Defendant failed and refused to pay the amount owed under the Settlement on or  
21 before July 31, 2015.

22           48. To date, Defendant has failed and refused to pay the remaining balance under the  
23 Settlement.

**COUNT I - BREACH OF CONTRACT**

49. Oriental realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 48, above, as if fully set forth herein.

29. The Settlement is a contract between Oriental and Defendant.

30. Oriental has fully performed all conditions of the Settlement.

31. Commencing on or about June 2015, and continuing thereafter, Defendant has breached the terms of the Settlement by failing and refusing to pay the required amount to Oriental.

32. Despite Oriental's timely notice of this breach, Defendant has failed and refused to cure Defendant's breach.

33. As a direct and proximate result of Defendant's conduct, Oriental has suffered damages.

WHEREFORE, Oriental demands judgment against Defendant in the amount of \$293,600, and such other and further relief as may be just, proper, and allowable, including Oriental's pre-judgment and post-judgment interest and the costs of this suit.

Respectfully submitted,

/s/ Alan D. Leeth

Alan D. Leeth (CA Bar No. 199226)

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*Counsel for Plaintiff, Hong Kong Oriental Import  
and Export Co. Ltd.*

## Exhibit A

## AGRI-NUT COMPANY, INC.

Head Office : 1633 Bayshore Hwy Suite 310 Burlingame, California 94010 USA  
T: (650) 372-8878 F: (650) 372-8879



## Sales Contract - SC-8503

DATE : April 27, 2014

BUYER :

CONSIGNEE :

HONGKONG ORIENTAL IMP AND EXP CO LTD  
56 JIAOCHANG PING, TANGJIA WAN VILLA  
GE.LONGGANG TOWN LINAN HANGZHOU CHINA  
TEL: 8657163631141, FAX: 8657163633141

To be Advised

PRODUCT	SPECIFICATION	QUANTITY	PACKAGING	PRICE
2014 Crop Almonds Inshell	Nonpareil Inshell	30 X 40 FT Containers	Packed In 900 x 50 Lbs Bags	\$2.545 / LB CIF Haiphong
		1,350,000 LBS Total Weight	45,000 LBS per container	Sliding Scale, Basis 70% meat yield, minimum 68% to maximum 74%

SHIPMENT : 1.) 15 x 40 Ft containers shipment in September 2014  
2.) 15 x 40 Ft containers shipment in October 2014

PAYMENT TERMS : 5% Deposit for 15 x 40 Ft containers due upon Contract Signing,  
10% Deposit for 15 x 40 Ft containers due upon Contract Signing  
Balance by T/T Before Vessel Arrival into Haiphong

DOCUMENTS : Commercial Invoice      USDA Grading Certificate  
Ocean Bill of Lading      Certificate of Origin  
Packing List      Weighmaster Certificate  
Certificate of Origin      Fumigation Certificate

BANK INFO : Account name: Agri-Nut Company, Inc.  
Bank : Wells Fargo Bank  
420 Montgomery St.  
San Francisco, California 94104

Account # : 2119807135  
Routing # : 121000248  
Swift Code : WFBUIUS65

Buyer:

Seller:

*Samuel Chen*  
08/27/14

*Dennis Lucas*  
Dennis Lucas



Exhibit B

**AGRI-NUT COMPANY, INC.**

1633 Bayshore Highway Suite 310, Burlingame, California 94010

T: 650-372-8878 F: 650-372-8879

[www.agrinutcompany.com](http://www.agrinutcompany.com)



HongKong Oriental Imp and Export Co. Ltd  
56 Jiaochang ping, Tangjia Wan Villa  
Ge Longgang Town Linan Hangzhou China

Reference: Settlement for Contract # 8503 – 30 Containers Np Inshell

This agreement is made on this 29<sup>th</sup> of September 2014 between Hongkong oriental Imp and Export Co., Ltd and Agri-Nut Company Inc.

Both Parties mentioned above Agreed the following terms and conditions:

1. Contract # 8503 for 30 containers x 45,000 lbs of Almonds Non Pareil Inshell will be cancelled and settled by paying the following penalty.

Agri-Nut will pay 10 pct of the Sales Contract amount of \$337,500. Total amount will be paid No later than June 2015.

2. In addition, Agri-Nut will return the full deposit amount of \$257,681.25 by early October 2014.

Agri-Nut Company

  
Seller

Hongkong Oriental Imp & Exp

  
Buyer

2014/10/18